



**EXTRAORDINARY
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**LABOUR & EMPLOYMENT DEPARTMENT
NOTIFICATION**

The 5th October 2007

No. 11323—II/1(S3)-27/2003--L. E.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Award, dated the 13th September 2007 in I. D. Case No. 33 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of SAIL, represented by the General Manager (P & A), Rourkela Steel Plant, Rourkela, Dist. Sundargarh and their workman Shri Dhanu Nayak represented through Vice-President, Rourkela Mazdoor Sabha, Rourkela was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

**IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
SAMBALPUR**

INDUSTRIAL DISPUTE CASE No. 33 OF 2003

Dated the 13th September 2007

Present :

Shri P. K. Mahapatro, LL. B.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of SAIL, .. First Party—Management
represented by the General Manager (P & A),
Rourkela Steel Plant, Rourkela,
Dist. Sundargarh.

And

Their Workman, .. Second Party—Workman
Shri Dhanu Nayak represented
through Rourkela Mazdoor Sabha,
The Vice-President, At Bisra Road,
Rourkela-I, Dist. Sundargarh.

Appearances :

Shri D. P. Mishra, Dy. Manager (Law),
SAIL, Rourkela Steel Plant,
Rourkela.

.. For the First Party—Management

Shri B. B. Sahoo,
Auth. Representative.

.. For the Second Party—Workman

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department u/Ss. 10 & 12 of the Industrial Disputes Act, 1947 vide memo No. 6714 (5), dated the 15th July 2003 for adjudication of disputes scheduled below:

“Whether the action of the management of SAIL, Rourkela Steel Plant, Rourkela by not reconsidering date of birth as the 3rd July 1948 in the Service Book of Shri Dhanu Nayak, PL No. 53271 as per the School Leaving Certificate/Transfer Certificate is legal and/or justified? If not, to what relief Sari Nayak is entitled?”

2. In this case the dispute between the parties revolves round a narrow campus. According to the workman his date of birth is the 3rd July 1948 as per the Transfer Certificate, but according to the management his date of birth is the 1st January 1944. Admittedly the workman joined the management on temporary basis on the 12th April 1966 and subsequently on the 1st August 1967 he was absorbed in the regular vacancy. Initially his appointment was accepted for a period of six months with the stipulation that he should produce necessary certificates in support of his age but till 1995 no such certificate was produced by the workman and the memory of the management had also failed it to remind him (workman) for production of the same. All of a sudden on the 21st August 1995 the workman presented a representation by enclosing a Transfer Certificate wherein his date of birth is recorded as the 3rd July 1948. As the situation was anomalous the management conducted an enquiry. In this regard an Enquiry Committee was appointed and took up the enquiry. The workman participated in the enquiry along with his co-worker. He also proved the Transfer Certificate to justify his claim. But after hearing him the Enquiry Committee fixed his date of birth as the 31st December 1944 which according to the management is in consonance with the rules of the Company. The said date of birth is fixed by the Company for the purpose of his service under it and then it was communicated to the workman vide letter, dated the 19th April 1999 (Ext. 9). By taking note of the date fixed vide Ext. 9 the workman was superannuated vide Ext. 12. But the workman was not satisfied with the above conclusion of the management. He then raised an industrial dispute. Thereafter the present reference was made for adjudication. The reference is for the limited purpose of determining whether the action of the management by not reconsidering the date of birth as the 3rd July 1948 in the Service Book of the workman as per the School Leaving Certificate/Transfer Certificate is legal and/or justified. The appropriate Government was conscious of the grievance of the workman that he had approached to the management for correction of his date of birth in the Service Book, but the same was not carried on, as a result, he has raised the industrial dispute. So the reference no way relates to the order of superannuation passed by the management but it revolves round the order passed by the management accepting the conclusion arrived by the Committee set up for the said purpose.

3. According to the workman as per the settled principles of law decided by our Hon'ble Court, both the employer and employee can dispute the date of birth available in service record of an employee maintained by the employer and it is the primary duty of the employer to resolve the dispute after giving fair opportunity to the employee. It is the specific case of the workman that after joining the post he was never asked till 1995 to furnish a certificate to prove his date of birth and while serving in Sintering Plant-I (O) of the Company, he noticed that his date of birth was recorded as the 1st January 1944 in the Service Book which is purely on speculation, but without verification of any certificate and

then vide application, dated the 21st August 1995 he represented the management to record his date of birth as the 3rd July 1948. Along with the application he had also enclosed a School Leaving Certificate wherein his date of birth is mentioned as the 3rd July 1948. But the same was not accepted by the management and then an Enquiry Committee was set up and after hearing him his claim was rejected. In turn, the management has justified its action by stating that in various documents the workman has declared his date of birth as the 1st January 1944, but subsequently in the year 1995 he challenged it and filed a Transfer Certificate (Ext. H) which is a highly doubtful document and cannot be taken up as the basis for determining his date of birth. To sum up, the management has justified its action of fixing his date of birth as the 31st December 1944 which was also reflected in the Service Book of the workman. The above rival stand of the parties needs careful scrutiny.

4. By taking note of the rival pleadings of the parties, the following issues are settled for adjudication.

ISSUES

(i) "Whether the action of the management of SAIL, Rourkela Steel Plant, Rourkela by not reconsidering date of birth as the 3rd July 1948 in the Service Book of Shri Dhanu Nayak, PL. No. 53271 as per the School Leaving Certificate/Transfer Certificate is legal and justified ?

(ii) To what relief, the workman Shri Nayak is entitled ?"

5. During the course of hearing, the workman is examined as the only witness from his side and has filed a catena of documents which are marked as Exts. 1 to 16. The management side also examined the A. G. M. (Personnel) as the only witness. To add to this, documents have been filed which are marked as Exts. A to J from the side of the management.

6. *Issue Nos. (i) and (ii)*—Both the issues are taken up together as those are interlinked. In the application form for employment (Ext. A/1) the workman has not furnished his date of birth. The said column is empty in the body of Ext. B/1. In the descriptive roll (Ext. E/1) the date of birth is not mentioned but in that column the year of birth is mentioned as 1944. In the Service Book (Ext. C/1) his date of birth is mentioned as 1st January 1944 and subsequently as per the report of the Enquiry Committee it was fixed to be 31st December 1944. In the application for inclusion in permanent seniority list for allotment of quarters (Ext. E) the date of birth of the workman is mentioned as 1st January 1944. So the documents prepared at the time of initial appointment of the workman, his date of birth is shown as the 1st January 1944. Though it is stipulated in the office order that he should file certificate to justify his date of birth within six months of joining in service, he has failed to comply it. He remained mum up till 1995. Then on the 21st August 1995 for the first time he made a representation (Ext. G) and claimed that his date of birth be corrected as the 3rd July 1948 in view of the Transfer Certificate. The Transfer Certificate is marked as Ext. 5 in this case. It was issued by the authority named, the Headmaster of Upper Primary School, Garaiholi in the district of Ganjam on the 12th July 1995. On perusal of the Ext. 5 it is forthcoming that he took admission in the School on the 2nd April 1955 and he left the School on the 25th April 1959. His date of birth is mentioned as on the 3rd July 1948. Admittedly the workman joined under the management on the 12th April 1966. So if his date of birth is held to be the 3rd July 1948 as per Ext. 5 then at the time of joining the age of the workman is below 18 years and as per law he could not have been allowed to enter in service. The entry in column No. 12 of Ext. 5 is that the applicant left Upper Primary School of Garaiholi for the purpose of getting employment. It is hard to fathom that at the age of 11 (eleven) he left the School on the 25th April 1959 with a view to get an employment. So the entries of Ext. 5 sounds improbable.

7. Admittedly after a long lapse of 36 years he had approached the management for correction of his date of birth. What made him to remain silent for such a long period is not explained in this case. Rather the workman is of the opinion that the entire onus is on the management to get it from him. The same is hard to accept when particulars regarding his date of birth as mentioned *Supra* are available with the management. Neither during the course of the enquiry conducted by the committee set up by the management nor during the course of hearing of this case the Headmaster of the Primary School was examined to suffice this aspect. As per the normal rule when a Transfer Certificate is issued the same should have been countersigned by the next higher authority. The same is lacking in this case. The entry available in Para. 12 of Ext. 5 that the same was issued for the purpose of employment is a circumstance to smell foul in the transaction. If it is accepted that the entry mentioned in column 12 was supplied basing on the

presentation of the workman in the year 1995, then the said entry is one sided and cannot be accepted by this Court. As per law a documents which is produced or created when there is controversy with regard to the crux of the issue, then such document is not to be treated as the basis for arriving into a conclusion. That should be independent corroboration in relation to the entries in such documents. As it appears Ext. 5 was issued on the 12th July 1995. By then the controversy with regard to the date of birth of the workman has already started. When Ext. 5 was obtained while the controversy was in process, so it is not to be given legal weightage. In my opinion in the scale of law in absence of corroboration, Ext. 5 cannot be treated as the guiding factor. In any manner, Ext. 5 is a doubtful document and basing on the same a big structure as advocated by the workman cannot be built.

8. Even if for the sake of argument it is accepted to be true then the fact that at the time of joining in the service he was a minor can be safely concluded. If at the relevant time the above aspect would have been taken up seriously then he would not have been allowed to join in the service. But he availed the opportunity of joining in the service by showing another date of birth and subsequently after a long lapse of time he has claimed a change of his date of birth. The workman cannot be allowed to avail double benefits and the declaration made by him at the initial stage should be the guiding factor. That the workman is a minor would have been seriously viewed in a Public Sector Undertaking. So in any manner Ext. 5 is not to be utilised in support of the workman.

9. At the time of argument emphasis is given from the side of the workman regarding fixation of rules by the management for determination of date of birth. As per stipulation of the rules the date of birth must be supported by a certificate. The first preference given in this regard is the certificate issued by the School wherein the employee last studied. According to the workman Ext. 5 is that certificate but the management during the course of the enquiry did not given preference. In the pleading it is specifically averred by the workman that the enquiry was conducted by given opportunity to him to produce documents and accordingly to him the personal hearing started on the 21st August 1995 and concluded on the 13th February 2006. If his averment available in Para. 7 of the statement of claim is taken up for consideration then it can be safely said that the principles of natural justice were duly observed by the committee while giving such a decision. There is no reason to challenge the conclusion arrived by the committee as because it was conducted after observing all the norms. I took judicial note of the report of the committee which is marked as Ext. J in this case. As per the practice pertaining by then which is in consonance with the rules of the Company, the last date of the year was accepted as his date of birth in order to give the workman the maximum benefit and in my opinion the said conclusion is correct. So there is every reason to conclude that the action of the management by not reconsidering the date of birth is justified. In view of my above conclusion the workman is not entitled to get any benefit from the management.

Hence the following Awards:—

AWARD

The reference is answered on contest. The action of the management of SAIL, Rourkela Steel Plant, Rourkela by not reconsidering date of birth as the 3rd July 1948 in the Service Book of Shri Dhanu Nayak, PL. No. 53271 as per the School Leaving Certificate is held to be legal and justified and the workman Shri Nayak is not entitled to get any relief from the management.

Dictated and corrected by me.

P. K. MAHAPATRO
13-9-2007
Presiding Officer
Labour Court, Sambalpur

P. K. MAHAPATRO
13-9-2007
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
N. C. RAY
Under-Secretary to Government